



November 27, 2002  
Project No. 104219009

Mr. John Odermatt  
Senior Engineering Geologist  
Land Discharge Unit  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123-4340

Subject: Tentative Order R9-2002-342: Waste Discharge Requirements for the Disposal and/or Reuse of Petroleum Fuel Contaminated Soils (FCS) in the San Diego Region, dated December 11, 2002

Dear Mr. Odermatt:

On behalf of our client, the Centre City Development Corporation (CCDC), and in consultation with Ms. Linda Beresford of Foley & Lardner, associated environmental counsel for the CCDC, this letter presents both general and specific comments on Tentative Order R9-2002-342 and proposed monitoring and reporting attachment, as requested in your notice of November 14, 2002. First of all, we commend you on your efforts in preparing the subject waste discharge requirements for fuel-contaminated soil. Having worked on this issue for a number of years, in particular for the Ballpark Redevelopment District, we are very aware of the levels of effort and patience required to offer approaches to soil reuse that are protective of the environment and preserve natural resources, and yet that are sensitive to the needs of the public and private sectors. We look forward to seeing waste discharge requirements for other common contaminants (e.g., lead) and contaminated media (e.g., burn ash).

#### GENERAL COMMENTS

It was not clear to us, or to others with whom we spoke who read the Tentative Order in detail, that the Order is intended to apply only to the export of fuel-contaminated soil (FCS) from the site where it was generated, and that the Order does not apply to the reuse of FCS at the site where it was generated. It is our understanding that reuse at the site of generation would be considered a clean-up issue and not covered by this Tentative Order.

Based on our experience with the export and reuse of construction-generated soil, requiring the owner of the receiving property to sign a document that, in effect, names the owner as the "discharger" and, therefore, fully responsible for the maintenance, monitoring, reporting, and liability associated with an "inactive landfill," "unclassified waste management unit," and "disposal site" will diminish the pool of prospective export sites. The significant regulatory implications associated with these terms (e.g., Local Enforcement Agency and California Integrated Waste Management Board jurisdictional issues), the \$1,000 (one thousand dollars) application fee, and scheduling/submittal requirements are likely to encourage the disposal of FCS in classified landfills, particularly for small quantities, rather than participation under this Tentative Order.

Also, it appears that the potential discharger has to begin the actual application process (i.e., public notification and submittal of the fuel-contaminated soil certification report) at least 60 days prior to discharge. However, the timeframe in which the Regional Water Quality Control Board (RWQCB) has to respond to the application is not clear, but such a timeframe is often essential and would be helpful for planning purposes. It also would be helpful if there was a mechanism to provide for emergency situations that may arise, such as encountering unknown FCS during a critical phase of a large, complex redevelopment project. Overall scheduling of the process is somewhat confusing and difficult to follow, particularly in conjunction with the requirements of the monitoring and reporting program. A process management decision flowchart or diagram could be useful.

Last, as you know, many public and private institutions are involved in the redevelopment of contaminated areas throughout the County of San Diego. These redevelopment projects often involve the excavation of contaminated and/or suspect soils, and project proponents are required to find ways to either reuse the soil at the project site, export the soil for reuse at another location, or dispose of the soils at a landfill. As long as it is protective of human health and the environment, it is typically most economical to reuse contaminated soil either at the project site or at another location. Reusing soils can significantly reduce costs, which would make more funds available to support redevelopment, and result in more sites being cleaned-up. However, as discussed above, we are concerned that the limitations and requirements of this Order will not encourage the reuse of soils at appropriate off-site locations. Once again, we commend you on

this effort, but believe that more work is required to create general waste discharge requirements and waivers to support the safe reuse of contaminated soils both at project sites and at off-site locations.

## **SPECIFIC COMMENTS**

The following presents comments regarding specific portions of the Tentative Order.

***Tentative Order:*** "A. 1. g. A topographic map at an appropriate scale and other information clearly illustrating the location, owners, and uses of all wells located within one mile of the site."

**Comment:** This will likely be a lot of work. Most information regarding private wells is confidential in California. Does this requirement include all permitted monitoring wells? Piezometers? Even information regarding municipal and agricultural supply wells is not readily available to the public due to increased security concerns. Could the Order incorporate a mechanism that would allow access to this information through the RWQCB?

***Tentative Order:*** "A.4. The acceptance or discharge of FCS wastes containing waste constituents, other than those listed in Table I, above natural background concentrations is prohibited."

**Comment:** What would be the RWQCB's criteria for establishing "natural background?" We propose that the "natural background" be the "ambient background."

***Tentative Order:*** "C. 2. b. Industrial Reuse Restriction: The disposal site shall only have an industrial or commercial use such as a road bed, commercial fill site or other use that limits potential human exposure. Residential properties shall not to be used as disposal sites. If a structure is to be constructed over the disposal site an approval must be obtained from the appropriate local agencies."

**Comment:** What are the local agencies the RWQCB is considering here? Does the RWQCB have a proposed method on how these local agencies will become involved?

***Tentative Order:*** "3. The results of sampling and analyses of FCS wastes shall be subject to either the primary level (a) and/or the secondary level (b) conditions listed below."

**Comment:** We propose that it be acceptable for a potential discharger to bypass the primary and go straight to the secondary levels.

***Tentative Order:*** "Table 2. Secondary (Leachable) Concentration Limits for Fuel Constituents in FCS Wastes."

**Comment:** Why are there no leachable limits for gas/av-gas?

***Tentative Order:*** "8. PUBLIC NOTIFICATION

*Public notification shall be completed at least 30 days prior to the discharge (for disposal or reuse) of FCS wastes at the site. Adjacent property owners and other interested parties are to be notified of the plans for the disposal/reuse of FCS wastes. The discharger shall provide the RWQCB with written documentation of the required public notification."*

**Comment:** Requiring a 30-day public notice period prior to the discharge will be very difficult to accommodate in a construction schedule or remediation project. We suggest this notification period be reduced to a 15-day public notice period.

***Attachment:*** "TENTATIVE MONITORING AND REPORTING PROGRAM NO. R9-2002-342 FOR THE DISPOSAL AND/OR REUSE OF PETROLEUM FUEL CONTAMINATED SOILS (FCS) IN THE SAN DIEGO REGION"

**Comment:** In Table 1, the detection limit for BTEX is 0.5 micrograms per kilograms ( $\mu\text{g/kg}$ ). However, in the text, the minimum detection limits for EPA Methods 8021 and 8260B is 5  $\mu\text{g/kg}$ . Which is correct? Also, if the minimum detection limits can be met, we propose the discharger be able to run 8260B instead of both analytical methods.

**Comment:** On the FCS Disposal Certification Form, under contaminant concentrations, "THP"-gas and "THP"-diesel should be "TPH."

As stated above, the reuse of contaminated soils is an important issue to the future of brownfields redevelopment. We hope that you will continue to work with us to develop policies to support the safe and practical reuse of soils contaminated with various constituents. If you have any questions, please contact Mr. Steve Beck at 858.576.1000, extension 1263, [sbeck@ninyoandmoore.com](mailto:sbeck@ninyoandmoore.com), or Ms. Linda Beresford at 619.685.6472, [lberesford@foleylaw.com](mailto:lberesford@foleylaw.com).

Respectfully submitted,  
**NINYO & MOORE**



Stephan A. Beck, C.E.G., HG., R.E.A. II  
Manager, Environmental Sciences Division

SB/kmf

cc: David Allsbrook, CCDC, 225 Broadway, Suite 1100, San Diego, California 92101-5074  
Linda Beresford, Foley & Lardner, 402 West Broadway, San Diego, California 92101-3542